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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**
10

11 MARIAN K. PORTER,

12 Plaintiff,

13 v.

14 SHYAM K. CHETAL, individually and d/b/a
15 ADVANTAGE REAL ESTATE PRO,
16 UNITED CAPITAL INVESTMENTS, INC.,
17 SMARTTOUCH SYSTEMS, INC., and
DOES 1-30, inclusive,

18 Defendants.

Civil Action No. 3:13-cv-00661-LRH-VPC

DEFENDANT UNITED CAPITAL
INVESTMENTS, INC.'S ANSWER TO
COMPLAINT

19 DEFENDANT UNITED CAPITAL INVESTMENTS, INC. (hereinafter "UNITED")
20 hereby answers Plaintiff's complaint as follows:

21 **I. PARTIES**

22 1. Responding to the allegations of Paragraph 1, UNITED is without sufficient
23 knowledge, information or belief to admit the allegations of this paragraph and on that basis
24 denies the allegations therein..

25 2. Responding to the allegations of Paragraphs 2, UNITED admits the allegations
26 of this paragraph.

27 3. Responding to the allegations of Paragraph 3, UNITED admits the allegations
28 contained therein.

1 4. Responding to the allegations of Paragraph 4, UNITED admits the allegations
2 contained therein.

3 II. JURISDICTION AND VENUE

4 5. Responding to the allegations of Paragraphs 6 and 7 of the Complaint, venue is
5 improper because of lack of jurisdiction over other Defendant, United. Pursuant to 28 U.S.
6 Code § 1391(b)(1) which states in relevant part:

7 (b) Venue in General. A civil action may be brought in

8 (1) a judicial district in which any defendant resides, if all defendants are
9 residents of the State in which the district is located;

10 for this reason, venue is improper. No defendant resides in the state of Nevada nor has the
11 transactions occurred in the State of Nevada. This court lacks jurisdictions over named
12 Defendant UNITED in this matter.

13 III. STATEMENT OF FACTS

14 6. Responding to the allegations of Paragraphs 8 through 15, UNITED is without
15 sufficient knowledge, information or belief to admit the allegations of these paragraphs, and on
16 that basis denies all allegations therein.

17 7. Responding to the allegations of Paragraph 17, UNITED admits the allegations
18 contained therein.

19 8. Responding to the allegations of Paragraph 18, UNITED is without sufficient
20 knowledge, information or belief to admit the allegations of this paragraph, and on that basis
21 denies the allegations therein.\

22 9. Responding to the allegations of Paragraph 19, UNITED admits the allegations
23 of this paragraph except as to the form of acknowledgement, which is subject to proof at trial.

24 10. Responding to the allegations of Paragraph 20, UNITED denies the allegations
25 contained therein.

26 11. Responding to the allegations of Paragraph 21, UNITED admits the allegations
27 contained therein.

1 19. Responding to the allegations of Paragraphs 59 – 62, UNITED is without
2 sufficient knowledge, information or belief to admit the allegations of these paragraphs, and on
3 that basis denies the allegations therein.

4 20. Responding to the allegations of Paragraph 63, UNITED denies the allegations
5 contained therein.

6 21. Responding to the allegations of Paragraph 64 - 65, UNITED is without
7 sufficient knowledge, information or belief to admit the allegations of these paragraphs, and on
8 that basis denies the allegations therein.

9 22. Responding to the allegations of Paragraphs 66 - 70, UNITED denies the
10 allegations contained therein.

11 COUNT II – TORTIOUS BREACH OF CONTRACT

12 23. UNITED incorporates by reference his responses to Paragraphs 1 through 70 of
13 the Complaint as if set forth in full herein.

14 24. Responding to the allegations of Paragraphs 71 – 74, UNITED denies the
15 allegations contained therein.

16 COUNT III –FRAUD

17 25. UNITED incorporates by reference his responses to Paragraphs 1 – 74 of the
18 Complaint as if set forth in full herein.

19 26. Responding to the allegations of Paragraphs 75 – 85, UNITED denies the
20 allegations contained therein.

21 27. Responding to the allegations of Paragraph 86, UNITED is without sufficient
22 knowledge, information or belief to admit the allegations of this paragraph, and on that basis
23 denies the allegation therein.

24 28. Responding to the allegations of Paragraph 87, UNITED denies the allegations
25 contained therein.

1 29. Responding to the allegations of Paragraph 88, UNITED is without sufficient
2 knowledge, information or belief to admit the allegations of this paragraph, and on that basis
3 denies the allegations therein.

4 30. Responding to the allegations of Paragraphs 89 – 92, UNITED denies the
5 allegations contained therein.

6 COUNT IV - NEGLIGENCE

7 31. UNITED incorporates by reference his responses to Paragraphs 1 through 92 of
8 the Complaint as if set forth in full herein.

9 32. Responding to the allegations of Paragraphs 94 – 98, UNITED denies the
10 allegations contained therein.

11 COUNT V – BREACH OF THE IMPLIED COVENANT OF
12 GOOD FAITH AND FAIR DEALING

13 33. UNITED incorporates by reference his responses to Paragraphs 1 through 98 of
14 the Complaint as if set forth in full herein.

15 34. Responding to the allegations of Paragraph 100, UNITED admits the allegations
16 contained therein.

17 35. Responding to the allegations of Paragraphs 101 – 107, UNITED denies the
18 allegations contained therein. UNITED denies the allegations not specifically admitted.
19 UNITED specifically denies that Plaintiff are entitled to any of the relief requested in the
20 Prayer for Relief.

21 AFFIRMATIVE DEFENSES

22 FIRST AFFIRMATIVE DEFENSE

23 1. The Complaint and each of it alleged causes of action fails to state a claim upon
24 which relief may be granted.

25 SECOND AFFIRMATIVE DEFENSE

26 2. UNITED fully performed the obligations, if any, it owed to Plaintiff; and any
27 failure of UNITED to perform was excused by Plaintiff's breach, failure, or conduct, or was
28 otherwise excused.

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THIRD AFFIRMATIVE DEFENSE

3. Plaintiff's claims, if any, are barred because UNITED has complied with and performed fully any and all obligations imposed upon it by law, contract, or equity, and any obligation owed to Plaintiff has been satisfied, released, or otherwise discharged.

FOURTH AFFIRMATIVE DEFENSE

4. Plaintiff's claims, if any, are barred because UNITED's acts and omissions were in good faith, UNITED had reasonable grounds for believing that its acts and omissions did not violate any law, and/or UNITED believed in good faith that it was asserting legal rights.

FIFTH AFFIRMATIVE DEFENSE

5. Plaintiff's claims, if any, are barred because Plaintiff consented to the alleged acts of UNITED.

SIXTH AFFIRMATIVE DEFENSE

6. Without admitting that UNITED is at fault in any way or that Plaintiff have incurred any damages, and solely for the purpose of stating this defense, any award to Plaintiff must be offset by, or reduced based on, amounts UNITED paid to Plaintiff, including but not limited to amounts which were not owed.

SEVENTH AFFIRMATIVE DEFENSE

7. Any and all damages sustained by Plaintiff are the result of Plaintiff's own negligence or breach of contract.

8. Defendant reserves the right to plead additional defenses (or cross-claims or counter claims) that may be identified during investigation and/or course of discovery.

WHEREFORE, Defendant UNITED CAPITAL INVESTMENT, INC. prays that Plaintiff take nothing by its Complaint, that judgment be rendered for Defendant, that Defendant recover costs herein incurred, and for such other and further relief as the court may

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1 deem proper.

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3 Dated: February 11, 2014

Respectfully submitted,

4 /s/ Hal Taylor
5 Attorney for Defendants
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CORPORATE DISCLOSURE STATEMENT
(Fed. R. Civ. P. 7.1)

DEFENDANT UNITED CAPITAL INVESTMENTS, INC. certifies that it is a non-governmental corporation organized and existing under the laws of the State of California.

Defendant is not a publicly-held corporation or other publicly-held entity, does not have any parent corporation, and no publicly-held corporation owns 10 percent or more of Defendant's stock.

Dated: February 11, 2014

Respectfully submitted,

/s/ Hal Taylor
Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of February, 2014, I electronically transmitted the above to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all counsel in this matter; all counsel being registered to receive Electronic Filing.

I further certify that on this 11th day of February, 2014, I placed a copy of the above DEFENDANT UNITED CAPITAL INVESTMENTS, INC.'S ANSWER TO COMPLAINT; and CORPORATE DISCLOSURE STATEMENT into a sealed envelope and mailed it via regular mail, postage prepaid, addressed to:

Charles R. Kozak, Esq.
Attorney at Law, LLC
3100 Mill Street, Suite 115
Reno, NV 89502
Attorney for Plaintiff

/s/ Hal Taylor
Attorney for Defendants